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September 17, 2007

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

VIA HAND-DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act
of 1984 as amended by the Cable Television Consumer Protection and Competition
Act of 1992; MB Docket No. 05-311
NOTICE OF ORAL EX PARTE PRESENTATION

Dear Ms. Dortch:

On September 14, 2007, Lauren Van Wazer, Chief Policy and Technology Counsel, Cox Enterprises, Inc., John Spalding, Vice President of Government Affairs, Cox Communications, Inc., and Michael Grover, Director of Government Affairs, Cox Communications, Inc., spoke with Cristina Chou Pauzé, Legal Advisor to Commissioner McDowell for Media Issues, to address questions concerning the impact on existing local cable franchises of the Commission's rulings in the FCC's March 5, 2007 Report and Order in the above-referenced proceeding.¹

The Cox representatives noted that the FCC long has been recognized as the expert agency on matters relating to the interpretation of the federal Cable Act (47 U.S.C. § 521, *et seq.*) by both cable operators and local franchising authorities. Because most cable franchise agreements have terms of 10 or 15 years or longer, many, if not most, agreements contain provisions recognizing that changes in law will occur during the term of the agreements, whether from judicial or Commission action, and the parties agree to comply with such changes as a matter of course. The Cox representatives further observed that, over the years, the FCC has issued myriad rulings interpreting the Cable Act which affected, at times significantly, the parties' obligations under their franchises. Two important examples are the "fee-on-fee" ruling and the cable modem order,² both of which affected cable operators' existing obligations to pay franchise fees pursuant to franchise agreements.

¹ See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 5101 (2007).

² See Franchise Fee "Pass Through" and *Dallas v. FCC*, *Memorandum Opinion and Order*, 13 FCC Rcd 4566 (1998); Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798 (2002), *aff'd*, *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005).

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Accordingly, a statement by the FCC in the instant proceeding that its March 5, 2007 rulings interpreting the Cable Act apply to incumbent cable operators would *not* be disruptive to existing franchises. In fact, such a statement would simply conform to prior FCC practice and the expectations of cable operators and the communities they serve that the laws underlying their franchise agreements are subject to change. It would, however, be very disruptive (and unlawful) if the FCC changed its normal course of business and prohibited the application of its interpretation of significant provisions of the Cable Act to incumbent cable operators until the renewal of their franchise agreements or some other time.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), an original and one copy of this notice are being submitted to the Secretary's Office and a copy is being provided to the Commission participant in the meeting.

Kindly contact the undersigned if you have any questions regarding the foregoing.

Respectfully submitted,



Jason E. Rademacher
Counsel to Cox Communications, Inc.

cc: Cristina Chou Pauzé, Esq.